

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992 -- Rate Regulation)
)
Uniform Rate-Setting Methodology)

CS Docket No. 95-174

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**COMMENTS OF THE NATIONAL ASSOCIATION
OF TELECOMMUNICATIONS OFFICERS AND ADVISORS**

The National Association of Telecommunications Officers and Advisors ("NATOA") respectfully submits these comments in response to the Notice of Proposed Rulemaking ("Notice") adopted on November 28, 1995 by the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceeding.

I. INTRODUCTION

On November 29, 1995, the Commission released for comment a proposal to permit cable operators to establish uniform rates for uniform cable service tiers offered in multiple franchise areas. The Commission has tentatively concluded that permitting operators to establish these rates "would be beneficial for subscribers, franchising authorities, and operators." Notice at para. 12. The Commission suggests two possible

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approaches for operators to use, and requests comment on the approaches, as well as on a number of other issues raised by the proposal.

NATOA is an 800-member organization representing local government telecommunications interests. NATOA has been an active participant in the Commission's cable rate regulation rulemaking proceedings, and many of its members are certified by the Commission to regulate basic service rates.

NATOA has carefully reviewed the Commission's uniform rate proposal, and believes the proposal may adversely affect subscribers and negatively impact the development of competition in the video services marketplace. The proposal would lead to yet another round of rate changes for subscribers that would be based not on changing costs or improved service offerings, but on industry demands for greater profits. In addition, the proposal would impose substantial new administrative burdens on local franchising authorities. The goals cited by the Commission -- reducing consumer confusion and promoting operational efficiencies -- are meritorious. The proposed approaches, however, are troublesome.

NATOA is not opposed to uniform cable rates. But, for the reasons discussed below, we believe that the Commission must carefully consider its current proposal to substantially revise its rate regulation procedures again. Should the Commission determine that new uniform rate rules are warranted, we offer one alternative approach in these comments that we believe may address the serious concerns raised by the Commission's initial proposal and suggested approaches.

II. DISCUSSION

In support of its proposal to permit operators to establish uniform rates, the Commission cites several benefits. First, the Commission asserts that “[s]uch an approach could reduce consumer confusion because a subscriber moving from one part of the operator’s service area to another would not experience any difference in price or service offerings.” Notice at para. 12.

Although the proposal may reduce the level of confusion felt by some subscribers, we believe it will increase the level of confusion experienced by a greater number of subscribers. In many areas, subscribers are already confused by the frequent rate “adjustments” they have experienced since regulations designed to address rising, unregulated rates were implemented less than three years ago. If the approaches suggested by the Commission were used, many subscribers will experience rate increases caused solely by the operator’s decision to establish uniform rates throughout a region. These rate increases will undoubtedly confuse many subscribers. Moreover, we respectfully submit that if a subscriber were given the option of choosing between rate uniformity (in the event he or she moved to another area served by the operator) or a rate increase, we believe the subscriber would opt for a non-uniform rate.

The Commission also cites the possible efficiencies to be gained if cable operators market their services on a regional basis. The Commission states that

“[f]acilitating an operator’s ability to advertise a single rate for cable service over a broad geographic region may lower marketing costs and enhance the operator’s efficiency in responding to competition from alternative service providers that typically may establish and market uniform services and rates without regard to franchise area boundaries.”

Notice at para. 12.

NATOA does not disagree with the Commission’s position that lowering marketing costs and enhancing competition are goals worthy of pursuing. However, as discussed below, we do not believe it is necessary to adopt new rules to permit operators to pursue these goals, and the cited benefits are clearly outweighed by the negative effects of the proposal. These negative effects include rate increases, consumer confusion, anticompetitive pricing and additional administrative burdens for regulatory authorities. Moreover, we are troubled by a regulatory process that would promote operational efficiencies but would not require operators to flow back to subscribers a portion of those savings.

The Commission’s proposal to adopt new rules permitting operators to implement uniform rates for uniform services, we believe, will adversely affect subscribers in several ways.

First, if either of the two approaches proposed by the Commission were adopted, many subscribers would experience rate increases without receiving any concurrent service improvements. In the first proposed approach, although two-thirds of

basic only subscribers -- 2,000 subscribers -- would see their rates decrease, two-thirds of CPST subscribers -- 20,000 subscribers -- would experience a rate increase. In the second proposed approach, one-third of the basic-only subscribers would experience an rate increase as would two-thirds of the CPST subscribers. It is difficult to assess the full impact of the proposal on subscribers without examining each and every possible situation. As the Commission notes, results “will vary widely depending on the current rates and the number of subscribers in each franchise area. In addition, these examples do not account for the impact of channel changes that may be necessary to achieve uniform packages of services.” Notice at Appendix A.

Second, as noted above, consumers will be confused. Under either approach suggested by the Commission, a significant number of subscribers will experience rate increases. These increases, which may not be associated with any service changes or improvements, will undoubtedly confuse subscribers.

Third, companies could set rates under the proposed uniform rate option to unfairly stifle emerging competition. The Commission has proposed allowing operators to include any franchise area within a yet undefined region. An operator could include both regulated and unregulated areas in a uniform service group.

The following example illustrates our concern. An operator facing emerging competition in an area with high costs could reduce its rates in that area. The company could use the Commission’s proposed uniform rate rules to recover the lost

revenue, forcing subscribers in other areas to subsidize the operator's costs. Nothing in the Commission's Notice would preclude this result. Nor would setting or defining the area subject to uniform rates address this concern. Any operator could add or delete a channel or a specific programming service to move an area in or out of a uniform service group.

Furthermore, the administrative burdens faced by franchising authorities would increase. To carry out its responsibilities, a franchising authority would need to collect and analyze information from multiple franchise areas. Its task would be further complicated by the fact that many current rates -- which operators would seek to use in calculating new uniform rates -- cannot be considered "established." Many franchising authority orders have been appealed to the Commission. In some areas, rates have not yet been established as franchising authorities await additional supporting documentation from operators or Commission action on earlier appeals, the results of which directly affect the setting of rates in current proceedings. In addition, a franchising authority would have no way to confirm the accuracy of rates in unregulated areas since no franchising authority is regulating those rates.

NATOA also believes that the proposal conflicts with the Commission's statutory mandate under the 1992 Cable Act. The Act directs the Commission to ensure that rates for basic service are "reasonable" and rates for CPST service are "not

unreasonable.” We do not believe the Commission would be fulfilling this mandate if it adopted new rules that permitted the results described above. Maximum permitted rates today are developed by factoring in such franchise area specific variables as census income level, number of additional outlets, number of subscribers and whether the system is part of a MSO operation. We do not believe that the Commission has justified its proposed departure from the revised methodology it adopted in the Second Order on Reconsideration.

It is important to note that the Commission’s current rules allow operators to establish uniform rates. Operators may achieve rate uniformity by lowering, rather than increasing, rates. Operators may charge any rate as long as the rate does not exceed the maximum permitted rate established by the rules. Thus, if an operator is able to significantly lower its costs by charging uniform rates, the operator may be able to lower its rates in certain areas to achieve uniformity without affecting its overall profits.

As we discussed above, the Commission’s proposal and suggested approaches raise a number of serious concerns. And, as the Commission noted, it is not even possible to assess the full impact of the proposal as results “will vary widely depending on the current rates and number of subscribers in each franchise area.” One approach that may address these concerns -- if the Commission decides to move forward in this proceeding -- is to require operators to submit specific, detailed uniform rate proposals to the Commission and to the regulatory authority in each affected community, and to obtain the approval of each of the authorities. This would permit all appropriate

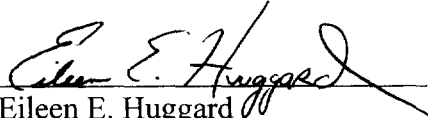
authorities to weigh the costs and benefits of each proposal and avoid unintended consequences. In addition, such an approach should resolve the issues discussed above.

III. CONCLUSION

Based upon the foregoing, NATOA respectfully requests the Commission to reconsider its proposal to modify its rules to permit cable operators to establish uniform rates for uniform cable service tiers.

Respectfully submitted,

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